HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO. 20231 OF 1995

BETWEEN:

Allwyn Watch Supervisory Staff Association
Allwyn Watch Limited, Patancheru,
Medak District

.....**Petitioner**

And

Allwyn Watches Limited, Patancheru & others

.....**Respondents**

:: O R D E R ::

Counsel for the Petitioner : Shri A. Jyotheeswar Reddy

Counsel for the Respondents : Smt. Umadevi

Dated: 12.07.2006

Allwyn Watch Supervisory Staff Association has filed this

petition for quashing the promotion of respondent Nos. 3 and 4 as Sales Officers on the ground that the decision of management of Allwyn Watch Limited (hereinafter described as 'the company') is violative of Articles 14 and 16 of the Constitution.

In the affidavit filed by Shri G. Chinna Badulla, Geneeral Secretary of the petitioner association, it has been averred that supervisory staff of the company is in different grades, the last being Rs. 1780 – 2900. The next promotion of the supervisory staff is to the post of Sales Officer in the grade of Rs.1925 – 2915. Sri G. Chinna Badulla has alleged that even though respondent Nos.3 and 4 are not eligible to be considered for promotion to the grade of Rs.1925 – 2915, the management of the company has not only considered, but promoted them vide Order dated 18-8-1995 and this has resulted in violation of the right to equality guaranteed to the eligible employees.

In the counter affidavit filed by Shri R. Krishna Murthy, Senior Manager (Personnel), Allwyn Watches Limited, an objection has been raised to the very maintainability of the writ petition on the ground that the company does not fall within the definition of 'State' under Article 12 of the Constitution.

In the context of the aforementioned objection, I repeatedly asked the learned counsel to show as to how Allwyn Watches Limited can be treated as 'State' within the meaning of Article 12 of the Constitution, but learned counsel did not advance any argument.

Smt. Uma Devi, learned counsel, who had appeared on behalf of respondent No.1 says that the company was closed down as early as in 1995 and was subsequently taken over by the State Government.

I have thoughtfully considered the entire matter. In my opinion, the writ petition is liable to be dismissed because the

petitioner has failed to show that the company falls within the definition of 'State' appearing in Article 12 of the Constitution. The question whether a company, corporation, society and institution can be treated as falling within the ambit of expression "other authorities" used in Article 12 of the Constitution has been considered in a large number of decisions including **Rajasthan SEB v. Mohan Lal**[1], **Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi**[2], **Sabhajit Tewary v. Union of India**[3], **Ramana Dayaram Shetty v. International Airport Authority of India**[4], **Ajay Hasia v. Khalid Mujib Sehravardi**[5], **Central Inland Water Transport Corpn. Ltd. v. Broja Nath Ganguly**[6] and **Chander Mohan Khanna v. National Council of Educational Research and Training**[7]. In **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology**[8], a seven Judges Bench of the Supreme Court (by majority of 5 : 2) over-ruled the judgment of the Constitution Bench in **Sabhajit Tewary v. Union of India** (supra) and reiterated the tests laid down in **Ramana Dayaram Shetty v. International Airport Authority of India** (supra), which are as under:

> "(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.
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> (2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.
>
> (3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State-conferred or State-protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government."

The same tests have been reiterated in **Virendra Kumar Srivastava v. U.P. Rajya Karmachari Kalyan Nigam**[9] and by the majority of the Constitution Bench in **Zee Telefilms Ltd. v. Union of India**[10].

In the present case, the petitioner has neither pleaded nor any material has been placed before the Court to show that respondent No.1 is a creature of statute or is registered as a company at the instance of State Government or the Central Government; that the State or the Central Government provides financial assistance to the company; that the State or the Central Government exercises deep and pervasive administrative control over the functioning of the Government and that the company is engaged in some activity which can be treated as akin to the governmental function.

In view of the above, it must be held that the company does not fall within the definition of 'State' under Article 12 of the Constitution of India and, therefore, the petition filed for enforcing the doctrine of equality is not maintainable against the company.

With the above observations, the writ petition is dismissed.

G.S.SINGHVI, CJ

SVS
12.07.2006

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[1] AIR 1967 SC 1857
[2] (1975) 1 SCC 421
[3] (1975) 1 SCC 485
[4] (1979) 3 SCC 489
[5] (1981) 1 SCC 722
[6] (1986) 3 SCC 156
[7] (1991) 4 SCC 578
[8] (2002) 5 SCC 111
[9] (2005) 1 SCC 149
[10] (2005) 4 SCC 649